HIGH COURT OF UTTARANCHAL AT NAINIATL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 413 (S/B) of 2004

Arshad Jamil vs. State of Uttaranchal and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 413 (S/B) OF 2004

Arshad Jamil,
S/o Sri Jamil Ahmad,
R/o No. 7 Shekhpuri,
Opposite Dev Nursing Home,
Roorkee, District Haridwar. .....Petitioner

Versus

1. State of Uttaranchal, through Principal Secretary Personnel Department, Dehradun.
2. Registrar General, High Court of Uttaranchal at Nainital.
3. Public Service Commission, Uttaranchal through its Secretary, Public Service Commission, Gurukul Kangri, Haridwar.
4. Legal Remembrancer/Law Secretary, Secretariat at Dehradun.
5. District Magistrate, Haridwar. .....Respondents

Coram: **Hon'ble Cyriac Joseph, C.J.**
Hon'ble Rajesh Tandon, J.

Dated: December 23, 2005

Per Hon'ble Rajesh Tandon, J.

1. Heard Sri Sudhanshu Dhulia, Senior Advocate, assisted by Sri D.S. Patni, learned counsel for the petitioner and Shri Sharad Sharma, counsel for the respondent no. 2 and Standing Counsel for the respondents no. 1, 3, 4 and 5.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 18.12.2004 passed

by respondent no. 1 terminating the services of the petitioner as Civil Judge (J.D.). Petitioner has, further, prayed for a writ of mandamus directing the respondents to allow the petitioner to work on the post of Civil Judge (Junior Division) and pay him salary regularly.

3. Briefly stated, an advertisement No. 2/2002-2003 was published inviting applications for the post of Civil Judge (Junior Division), by the Uttaranchal Public Service Commission (U.P.S.C.) The petitioner, being a member of the caste 'Momin-Ansar' which is included in the list of Other Backward Classes (O.B.C.) in Uttaranchal, applied for the post of Civil Judge (Junior Division). Admit Card was issued to the petitioner for the preliminary examination. The petitioner succeeded in the said examination and he was called for the main examination. The list of successful candidates for interview was published in the News Paper by the Public Service Commission. The petitioner was one of the candidates included in the list of successful candidates. Accordingly, a letter was sent on 26.06.2003 calling him to appear for interview on 26.07.2003. With this call letter for interview dated 26.06.2003, a format of OBC Certificate was sent which was to be submitted on the date of interview. The said OBC certificate on prescribed format sent by UPSC was duly issued by the Tehsildar Roorkee after examining the OBC Certificate of the petitioner No. 665 dated 29.06.2002. As per advertisement, apart from the said format of caste certificate issued by UPSC, there was no other requirement with regard to residence. The format as well as Certificate issued are quoted below:-

''उत्तरांचल के अन्य पिछड़े वर्ग के लिए जाति प्रमाण पत्र का प्रपत्र

प्रमाणित किया जाता है कि श्री /श्रीमती / कुमारी.....
.....तहसील.....नगर.....जिला.....
उत्तरांचल की .....जाति के व्यक्ति हैं। यह जति उत्तरप्रदेष लोक सेवा (अनुसूचित जातियों, अनुसूचित जन–जातियों तथा अन्य पिछड़े वर्गों के लिए आरक्षण) अधिनियम् 1994 की अनुसूची– 1 के अर्न्तगत मान्यता प्राप्त है।

यह भी प्रमाणित किया जाता है कि श्री/ श्रीमती/कुमारी.....उक्त अधिनियम, 1994 की अनुसूची/ 2 से अच्छादित नहीं है।

श्री / श्रीमती / कुमारी .....तथा/अथवा उनका परिवार उत्तरांचल ग्राम.....तहसील.....नगर .....जिला.....में सामान्यतया रहता है।

स्थान
दिनांक
दिनांक
मुहर

हस्ताक्षर.....
पूरा नाम.....
पदनाम.....
जिलाधिकारी/ अतिरिक्त / जिलाधिकारी / सिटी मजिस्ट्रेट / परगना मजिस्ट्रेट / तहसीलदार

Certificate issued by the Tehsildar:-

प्रमाणित किया जाता है कि श्री/ श्रीमती / कुमारी अरषद जीमल सुपुत्र / पत्नी / सुपुत्री श्री जीमल अहमद निवासी ग्राम 7 शेखरपुरी तहसील रूड़की नगर रूड़की जिला हरिद्वार उत्तरांचल के राज्य की मोमिन अंसार पिछड़े जाति के व्यक्ति हैं। यह जाति उ0 प्र0 लोक सेवा अनुसूचित जातियोंए अनुसूचित जनजातियों तथा अन्य पिछड़े वर्गों के लिए आरक्षण अधिनियम, 1994 जैसा कि उत्तरांचल राज्य से प्रभावी है, की अनुसूची– 1 के अर्न्तगत मान्यता प्राप्त है। उक्त अधिनियम 1994 की अनुसूची –2 से अधिसूचना संख्या –22/16/92–का–2/1995 टी सी दिनांक 8 दिसंबर, 1 9 9 5 द्वारा यथा संषोधित से आच्छादित नहीं है।

श्री / श्रीमती / कुमार अरषद जीमल तथा / अथवा उनका परिवार उत्तरांचल के ग्राम 7 शेखपुरी तहसील रूड़की नगर हरिद्वार में सामान्यतया रहता है।

स्थान रूड़की हस्ताक्षर.....

..

दिनांक 9—7—03

पूरा नाम.....

पद नाम तहसीलदार

मुहर रूड़की

जिलाधिकारी / अपर जिला मैजिस्ट्रेट / सिटी मैजिस्ट्रेट / उप जिला मैजिस्ट्रेट / तहसीलदार

English Text

Office of the Tahsildar, Rurkee

Letter No. 665 Na. Na. 2002 dt.

CERTIFICATE OF OTHER BACKWARD CLASS

Certified that Shri Arshad Jamil s/o Sri Jamil Ahmed r/o 7, Sekhpuri in front of Deo Nursing Home, Rurkee, Pargana and Tehsil Rurkee, District Haridwar is a member of Other Backward Caste, Momin Ansar of the State of Uttaranchal. This caste has been recognized under Schedule I of Uttaranchal Public Service Commission and Other Backward Classes Reservation Act, 1994 as enforceable in the State of Uttaranchal.

It is also certified that Shri Arshad Jamil is not covered by Notification No. 22/16/92-ka-2/1995 TI.CI. dated 8 December, 1995 as amended vide Schedule-2 of the said Act, 1994.

Sri Arshad Jamil and/or his family ordinarily resides at 7, Sekhpuri Village, Roorkee Tehsil Haridwar Nagar of Uttaranchal State.

Dated: 29.6.2002

SD/- (illegible)

Tehsildar, Rurkee

After the interview, a list of successful candidates was issued by the UPSC recommending for appointment as Civil Judge (Junior Division). In this list the name of the petitioner found place at Serial No. 29 in the category of OBC, meaning thereby that the documents and certificates of the petitioner were found to be to the satisfaction of respondent no.3. The list of successful candidates is extracted below:-

“SI. No	Roll. No.	Name	Category
1-	6643	Nitin Kumar	
2-	2321	Dhananjay Kumar	
3-	2041	Ajai Chaudhari	OBC
4-	566	Anuj Kumar Khulbe	
5-	111	Rajeev Kumar Khulbe	
6-	2119	Kaushal Kishor Shikla	
7-	65	Sudhir Kumar	
8-	527	Amit Kumar Sirohi	
9-	12320	Neetu Joshi	Women
10-	2013	Sujata Singh	
11-	13723	Shahanshal Mohd. Dilber Danish	
12-	2124	Srikant Kumar Pandey	
13-	173	Rakesh Kumar Mishra	
14-	12281	Vindhyachal Singh	
15-	1879	Km. Rama Pandey	
16-	5717	Manish Mishra	
17-	6943	Neena Agrawal	
18-	3018	Brijendra Singh	SC
19-	6228	Amarinder Singh	
20-	3244	Bharat Bhushan Pandey	
21-	101	Arvind Kumar	OBC
22-	175	Varun Kumar	

23-	461	Sayan Singh	OBC
24-	7658	Km. Monika Mittal	Women
25-	465	Km. Neelam	”
26-	13108	Rajeev Kumar	OBC
27-	3432	Anuj Shri Juyal	Women
28-	12524	Preetu Rani	“
29-	12763	Arshad Jamil	OBC
30-	1216	Sujeet Kumar	SC
31-	2390	Mohd. Sultan	OBC
32-	7467	Mahesh Chandra Kaushik	OBC
33-	5981	Km. Shadav Bano	OBC(W)
34-	9331	Naseem Ahamad	OBC
35-	176	Abdul Kayum	OBC
36-	10691	Mithilesh Jha	Ex. Soldier
37-	6954	Shaish Chandra	SC
38-	12519	Om Kumar	SC
39-	337	Sanjeev Kumar	SC
40-	1045	Km. Archana Sagar	SC (Woman
41-	7866	Susum	“
42-	191	Nandan Singh	ST

4. The respondents, after examining the documents submitted by the petitioner, issued appointment letter dated 18th September, 2003 appointing him to the post of Civil Judge (Junior Division) on probation for two years. The said appointment letter was issued subject to verification of character and medical report.

5. Pursuant to the said appointment order, a notification dated 18.9.2003 was issued by High Court of Uttaranchal posting the petitioner as Civil Judge (Junior Division) in the vacant Court at Purola, Uttarkashi.

6. The Uttaranchal Public Service Commission vide letter dated 15.09.2003 requested the District Magistrate to verify the OBC certificate of the petitioner. Subsequently, the District Magistrate, Haridwar vide letter dated 23.09.2003 wrote to Tehsildar Roorkee to verify the OBC certificate. In compliance of the order of the District Magistrate, the Tehsildar Roorkee, after taking the statement of neighbors and landlord of the petitioner and also after duly verifying the Assessment Register of the Nagar Palika, Roorkee, vide letter dated 31.10.2003 reported that the OBC certificate of the petitioner is correct and genuine and in accordance with the Government Order dated 29th March, 2003. The said correction is quoted below"-

''प्रार्थी श्री अरषद जीमल पुत्र जीमल अहमद रहने वाले 7 शेखपुरी देव नर्सिगं होम के सामने अपना प्रमाण पत्र दिनांक 29.6.02 को बनवाया है जिससे शपथपत्र संलग्न किया गया है कि शपथपत्र में अपना पता 7 शेखपुरी रूड़की उपरोक्त दर्षाया है। तथा अपनी जाति मोमिन अंसार दर्षाया है। श्री अरषद जीमल पुत्र जीमल अहमद निवासी 7 शेखपुरी जाति मोमिन अंसार का अन्य पिछड़ी जाति निवासी प्रमाण पत्र शासनादेषों के अनुसार सही जारी किया गया है।''

English Text:

Applicant Shri Arshad Jameel s/o Jameel Ahmed resident of 7 Shekhpuri, in front of Deo Nursing Home has got a certificate dated 29.6.2002 and has sworn an affidavit showing his address as 7 Shekhpuri, Roorkee and his caste as Momin Ansar. The certificate issued to Sri Arshad Jameel s/o Jameel Ahmed showing his residence as 7, Shekhpuri and his caste as Momin Ansar, Other Backward Caste, was correctly issued in accordance with the Government orders.

7. The respondent simultaneously also inquired about the whereabouts of the petitioner through the Police agency. The

Station Officer, Gangnahar Roorkee, submitted a report to the S.S.P. Haridwar vide GBR No. 331/03 in which it is stated that the petitioner and his family are staying at Roorkee for the last more than 15 years. details are quoted below:-

श्रीमान जी,

संलग्न पत्रांक जी0 वी0 आर0 नं0 331/03 अरषद जीमल उपरोक्त के सम्बन्ध में पुनः जांच अमल में लायी गयी तो आख्या इस प्रकार है। श्री अरषद जीमल पुत्र जीमल अहमद निवासी शेखपुरी देव नर्सिंग होम के सामने रूड़की थाना गंगनहर रूड़की जिला हरिद्वार में श्री फुरकान अहमद के मकान में वर्ष 1991 से किराये पर सपरिवार रहता है। इससे पहले वर्ष 1988 से ये मै0 पुरानी तहसील रूड़की में श्रीमती जुलिषा के मकान में किराये पर रहते थे ये करीब 15 वर्षों से रूड़की में स्थायी रूप से निवास कर रहे हैं। उससे पहल मै0 खाला पार थाना को मु0 नगर नि0 मु0 नगर में रहना पता चला है। राषन कार्ड वोटर लिस्ट, मतदान पहचान पता आदि की फोटो स्टेट प्रति संलग्न है।

2– थाना हाजा के रिकार्ड के अनुसार कोई सजायाबी अंकित नहीं है।

3– चरित्र अच्छा पाया गया।

रिपोर्ट बाद जांच महोदय की सेवा में प्रेषित है।

English Text:

Sir,

Refer annexed letter G.V.R. No. 331/03. Fresh enquiry was conducted in respect of Arshad Jamil. The report is as hereunder:

1. Shri Arshad Jamil s/o Jamil Ahmed R/o Shekhpuri, resides with family in the house of Shri Rurkan Ahmed situated in front of Deo Nursing Home, P.S. Ganga Nahar, Roorkee as tenant since the year 1991. Prior to it he lived in the house of Smt. Julisha situated at Mohalla Old Tehsil, Roorkee since the

year 1988 as tenant. He has been permanently residing at Rurkee for the last about 15 years. It has been informed that pior to it he had been residing at Mohgalla Khalapara P.S. Muzaffarnagar, District Muzaffar Nagar. The photocopies of Ration card, voter list, voter identification care, address etc. are enclosed.

2. As per the record of the police station there is no mention the report is forwarded to you, sir.

3. The character was found to be satisfactory. After enquiry the report is forwarded to you, Sir.

8. Through letter dated 22.05.2004 sent by the District Judge, Uttarkashi, a reference was made regarding office memorandum dated 13.05.2004 and D.O. letter dated 21.05.2004 sent by the Registrar General High Court, and explanation was called from the petitioner. It is alleged in the office memorandum dated 13.05.2004 that as per complaint of one Sri Abdul Kareem dated 12.01.2004, the petitioner obtained appointment in the judicial service on the basis of forged OBC certificate. It has further been alleged that on the said complaint, an inquiry was conducted by DM Haridwar, who has stated that the petitioner is a permanent resident of District Muzaffarnagar U.P. whereas the petitioner had stated that he was a resident of State of Uttaranchal. The petitioner was asked to explain why the appointment of the petitioner should not be cancelled.

9. According to for the petitioner, the said inquiry made by the District Magistrate, Haridwar was ex- parte and contrary to the guidelines contained in the Government Order dated 29.03.2003. It is also stated that no date has been mentioned in the report of the District Magistrate.

10. In reply to the aforesaid letter, the petitioner submitted his letter dated 29.05.2004 requesting to furnish the copies of documents/information to enable him to submit a proper explanation. The documents included the alleged complaint dated 12.01.2004. Contents of the reply letter of the petitioner are quoted below:-

"Sir,

I am in receipt of the aforesaid D.O. sent to me through the Hon'ble District Judge, Uttarkashi by which I have been called upon to submit my explanation against the aforesaid show cause notice.

It is not possible to give reply to the aforesaid show cause notice unless the following documents/information are furnished to me.

Kindly furnish the copies of following necessary documents/information to enable me to reply to the show cause notice.

1. Copy of the alleged complaint dated 12.01.2004 of some Sri Abdul Karim, S/o Waheed, R/o Sheikhpur, Roorkee against me.

2. Who is Abdul Karim, S/o Waheed, R/o Sheikhpuri, Roorkee and how and why is he interested in making complaint against me.

3. The order/letter by which District Magistrate, Haridwar was directed to conduct enquiry upon the said complaint against me.

4. The report/letter of District Magistrate, Haridwar by which he informed that I am not a resident of Roorkee, Distt. Haridwar.

4. The evidence before the District Magistrate, Haridwar on the basis of which he sent his enquiry report against me.

Thanking you.

Yours truly.

(Arshad Jamil)
Civil Judge (J.D.)
Purola, Distt. Uttarakashi."

11. Thereafter, on 13th July, 2004, recommendation was sent by the High Court for terminating the services of the petitioner.

12. Learned counsel for the petitioner submitted that despite the request to the respondent to furnish the documents, the same were not supplied to the petitioner and hence after waiting for some time the petitioner submitted his reply to the show cause notice on 21.07.2004 through the Registrar General, High Court of Uttaranchal at Nainital to the respondent no.1. Petitioner has submitted that the minutes of the Full Court meeting held on 13th July, 2004 with regard to the recommendation for terminating the petitioner's services were not confirmed in the Full Court meeting held on 23.09.2004 or thereafter.

13. On 27.07.2004, the petitioner also submitted his reply to the explanation called by respondent no. 2 vide letter dated 21.05.2004.

14. Learned counsel for the petitioner has submitted that as stated in the impugned order, the reply of the petitioner dated 20/21.07.2004 was sent to the respondent no. 1 through respondent no. 3 on 07.08.2004 and that the forwarding letter of the reply by the respondent no. 3 indicates that the earlier recommendation sent by the High Court with regard to termination of service of the petitioner was not confirmed.

15. Learned counsel for the petitioner has confined his arguments to the following points:

1) There was no compliance of Article 235 of the Constitution of India as there was no material before the Full Court Meeting held on 13th July, 2004 to take a decision recommending the termination of the services of the petitioner.

2) Since the above decision taken in the Full Court Meeting held on 13th July, 2004, was not confirmed in the subsequent meeting of the Full Court held on 22.09.2004, it has become irrelevant.

3) In view of Section 9 of the U.P. Reservation (For Scheduled Caste, Scheduled Tribe and Other Backward Class) Act. 1994 read with the Government Order dated 29th March, 2003 which refers to the "Ordinary Resident", the termination order is illegal and liable to be quashed.

4) The termination order has neither been passed by the Appointing Authority i.e. the Governor of Uttaranchal, nor any approval has been sought from the Governor. Hence the impugned order is without jurisdiction and is liable to be quashed.

Point Nos. 1 and 2:

16. Article 235 of the Constitution of India provides as under:-

"235. Control over subordinate courts.- *The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be*

construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law".

As will appear form the aforesaid Article the control over district courts and the courts subordinate thereto, including the posting and promotion of, and the grant of leave to persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court.

17. In the case **Registrar, High Court of Madras Vs. R. Rajih 1988 (3) SCC 211** their Lordships of the Apex Court have classified the requirement of Article 235 of the Constitution of India in two parts. Under the first part a decision has to be made as to whether any action is required to be taken against an officer and under the second part the decision will be carried out by a formal order. According to the Supreme Court the power of control envisaged under Article 235 pf the Constitution of India relates to the power of making a decision by the High Court against a member of the Subordinate Judicial Service and such a decision has to be taken by holding an inquiry by the High Court against the member concerned. Relevant paragraph 12 is quoted below:-

"An action against any government servant consists of two parts. Under the first part, a decision will have to be made whether an action will be taken against the government servant. Under the second part, the decision will be carried out by a formal order. The power of control envisaged under Article 235 of the Constitution relates to the power of making a decision by the High Court against a member of the

subordinate judicial service. Such a decision is arrived at by holding an enquiry by the High Court against the member concerned."

18. While interpreting Article 235 of the Constitution of India with regard to the superintendence over lower judiciary in ***T. Lakshmi Narasimha Cahri Vs. High Court AIR 1996 SC 2067,*** it has been held by the Supreme Court that under Article 235 the power of the High Court is to recommend to the State and in formulating its recommendation, the High Court is to keep in view decisions relating to this aspect.

19. In Madan Mohan Chaudhary AIR 1999 SC 1026, the Apex Court has observed as under:-

"It was thus a case where there was no material on the basis of which an opinion could have been reasonably formed that it would be in the public interest to retire the appellant from service prematurely in terms of Rule 74 of the Bihar Service Code."

20. In ***Registrar (Admn,) Vs. Sisisr Kanta Satapathy (1999) (7) SCC 725,*** relying upon the earlier judgment in ***Registrar, High Court of Madras Vs. R. Rajiah (1988) 3 SCC 211,*** the Supreme Court held as follows:-

"12. In Registrar, High Court of Madras v. R. Rajiah (1988) 3 SCC 211, this Court had occasion to consider the validity of an order of compulsory retirement passed by the High Court. The learned Judges held that the proper procedure for the High Court was to recommend the case for compulsory retirement and it was for the Governor on whom the recommendation of the High Court was binding, to pass the formal order. This Court in the said case observed as follows:
(SCC pp. 217-18, 219 and 220, para 12, 16 and 18)

"12. <u>The test of control is not the passing of an order against a member of the subordinate judicial service, but the decision to take such action.</u> It may be that so far as the members of the subordinate judicial service are concerned, it is the Governor, who being the appointing authority, has to pass an order of compulsory retirement or any order of punishment against such a member. But passing or signing of such order by the Governor will not necessarily take away the control of the High Court vested in it under Article 235 of the Constitution. An action against any government servant consists of two parts. Under the First part, the decision will have to be made whether an action will be taken against the government servant. Under the second part, the decision will be carried out by a formal order. The power of control envisaged under Article 235 of the Constitution relates to the power of making a decision by the high Court against a member of the subordinate judicial service. Such a decision is arrived at by holding an enquiry by the High Court against the member concerned.

16. It is apparent from the observation extracted above that this Court also understood the power of control of the High Court as the power of taking a decision against a member of the subordinate judicial service. The High Court is the only authority that can take such a decision. The High Court will hold an enquiry and decide on the result of such enquiry whether any action will be taken against a member of the subordinate judicial service. If it comes to the conclusion that such an action is required to be taken. It will make a recommendation in that regard to the State Governor who will make an order in accordance with the recommendation of the High Court.

18. In High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal (1998) 3 SCC 72, a two-Judge Bench of this Court while construing the scope and extent of Articles 233 to 235 of the Constitution, held as follows: (SCC pp. 86-87, para 34)

"34. This article shows that the High Court has to exercise its administrative Judicial and disciplinary control over the members of the judicial service of the State. The word 'control' referred to in this article, is used in a comprehensive sense to include general superintendence of the working of the Subordinate Courts, disciplinary control over the Presiding Officer of he Subordinate Courts and to recommend the imposition of punishment of dismissal, removal and reduction in rank or compulsory retirement 'Control' would also include suspension of a member of the judicial service for purposes of holding a disciplinary enquiry, transfer, confirmation and promotion."

21. In **Gauhati High Court Vs. Kuladhar Phukan AIR 2002 SC 1589,** while interpreting Article 235 of the Constitution of India, the Apex Court has observed as under:-

"The constitution here means meaningful, effective and conscious consultation. In Tej Pal Singh v. State of U.P. and another (1986) 3 SCC 604), it was held that in a matter affecting the service career of a judicial officer ordinarily the initiative for an action must come from the high Court and even otherwise in the absence of recommendation of the High Court an action taken by the Governor would be illegal and devoid of constitutional validity. Such, error, if committed, would be incurable and even an ex post facto approval would not cure the invalidity."

22. In ***Samsher Singh Vs. State of Punjab AIR 1974 SC 2192*** the Apex Court has observed as under:-

"76. The High Court under Article 235 is vested with the control of subordinate judiciary. The High Court according to the appellant failed to act in terms of the provisions of the Constitution and abdicated the control by not having an inquiry through Judicial Officers subordinate to the Control of the High Court but asking the Government to enquire through the Vigilance Department."

23. From the above judicial pronouncements of the Hon'ble Supreme Court it is clear that even though the Governor is the appointing authority of a member of the subordinate judicial service the decision to terminate the service of a member of the subordinate judiciary has to be made by the High Court. Only if such a decision is taken by the High Court and a recommendation is sent to the appointing authority, the formal order of termination of service can be issued by the appointing authority. If the order of termination is not on the basis of a valid recommendation made by the High Court the termination of service is illegal. The High Court can take a decision to terminate the service of a member of the subordinate judiciary only after holding an enquiry by the High Court and only if there are sufficient materials before the High Court to come to the conclusion that termination of service is necessary. If the decision of the High Court to terminate the Service of a member of the subordinate judiciary is made without holding an enquiry or without having sufficient materials before the High Court to arrive at a conclusion that termination of service is necessary, the said decision of the High Court would be arbitrary and illegal. In the present case it is not disputed that the High Court had not conducted any enquiry against the

petitioner through a judicial officer subordinate to the control of the High Court. It is without holding such an enquiry that the High Court decided to terminate the service of the petitioner and sent the recommendation to the Government. Therefore, the decision of the High Court and the recommendation sent by the High Court to the Government are illegal and invalid. Any order of termination of service passed on the basis of an invalid and illegal decision and recommendation also is illegal and invalid. Hence the impugned order of termination of the petitioner is liable to be quashed on this ground alone.

24. It is also not disputed that though the petitioner had requested for the copies of the documents on the basis of which the High Court had sought his explanation they were not supplied to him. Even the copy of the complaint stated to have been made by Sri Abdul Kareem was not given to the petitioner. Even then the petitioner submitted Annexure-18 reply dated 27.07.2004 denying the allegation against him. But in the meanwhile, on 13.07.04 the High Court decided to terminate the service of the petitioner and sent a letter to the Government recommending termination of service of the petitioner. It was on the basis of the said recommendation that Annexure-1 order dated 18.10.04 was issued by the Government terminating the services of the petitioner. After the decision dated 13.07.04 of the Full Court of the High Court and before issuing Annexure-1 order dated 18.12.04, the petitioner's explanation dated 27.7.04 was received by the High Court. Probably in view of the said explanation dated 27.7.04 the Full Court in its meeting held on 23.9.04 did not confirm the minutes of the meeting on 13.7.04 with regard to the termination of service of the petitioner. However the said decision dated 23.9.04 of the Full Court declining to confirm the minutes of 13.7.2004 was

communicated of the Government only through a letter dated 15.12.2004 which was received by the Government only on 20.12.04. In the meanwhile, Annexure-1 order dated 18.12.04 terminating the service of the petitioner had been issued by the Government. In such circumstances, there is force in the contention of the petitioner that if the Government had been informed of the decision dated 23.09.04 of the Full Court of the High Court, the Government would not have issued Annexure-1 order. At any rate when the Full Court of the High Court declined to confirm its decision taken on 13.7.04, the said decision lost its significance and relevance. The termination of service of the petitioner based on such a recommendation which had lost its significance and relevance is defective and vitiated. Evan otherwise, in the absence of any enquiry conducted by the High Court through a judicial officer subordinate to the control of the High Court the only material before the Full Court of the High Court on 13.7.04 was the complaint against the petitioner, the show cause notice dated 13.5.04 issued to the petitioner on the basis of the Government letter dated 18.10.03 directing the District Magistrate Haridwar to enquire into the said complaint and the letter dated 20.3.2004 of the Senior Superintendent of Police Haridwar addressed to the District Magistrate. The High Court did not bother to furnish to the petitioner copies of the documents relied on in the show cause notice or to wait till he submitted his explanation dated 27.7.04. The decision dated 13.7.04 of the Full Court was taken in a hurry and without having sufficient materials to arrive at a conclusion that termination of service of the petitioner is necessary. Thus, the decision dated 13.7.04 of the Full Court of the High Court was arbitrary and was not based on sufficient material. The decision was taken also in

violation of the principles of natural justice in as much as the petitioner was not given sufficient and effective opportunity to represent his case, for these reasons also, the decision dated 13.7.04 of the Full Court and the recommendation made by the Full Court to terminate the service of the petitioner are illegal and invalid. Consequently the impugned Annexure-1 order also is illegal and invalid.

Point No. 3:

25. Petitioner has submitted that he has submitted certificate of OBC on prescribed format in consonance with the Govt. Order dated 29.03.2003. The said format was verified on 31.10.2003 and the same was found to be valid. The same is quoted below:-

कृपया जिलाधिकारी कार्यालय के पत्र संख्या 1633/ स0 सहा0 (सत्यापन) दिनांक 23 सितम्बर 2003 श्री अरषद जीमल की जारी पिछडी जाति प्रमाण पत्र की जांच के सम्बन्ध में है का सन्दर्भ ग्रहण करने की कृपा करें उक्त के सम्बन्ध में जांच राजस्व निरीक्षक रूडकी द्वारा कराई गई तथा मैंने स्वयं मौके पर जाकर जॉच की तथा उनके द्वारा प्रस्तुत अभिलेखों का पराक्षण किया तथा शासनादेषों का भी अवलोकन किया। राजस्व निरीक्षक व मेरे द्वारा आसपास के व्यक्तियों के बयान श्री फुरकान अहमद पुत्र अब्दुल लतीफ निवासी 7 शेखपुरी जीमल अहमद पुत्र जहर अहमद निवासी 7 शेखपुरी इकबाल अहमद पुत्र अब्दुल पुत्र अब्दुल मजीज निवासी 149 शेखपुरी व अजीजुर्रहमान पुत्र हबीबूर्रहमान निवासी 88 शेखपुरी रूडकी के लिये गये बयानों में सभी व्यक्तियों ने भी अरषद जीमल पुत्र जीमल अहमद को 1991 से 7 शेखपुरी रूडकी हरिद्वार पर रहना तसदीक पाया गया तथा जाति मोमिन अंसार को उत्तरांचल की अन्य पिछडी जाति की सूचि के अर्न्तगत आती है।"

English Text:

Please refer to letter No. 1633/Sa Saha verification dated 23rd September, 2003 of the office of the District Magistrate

which is in respect of enquiry of the certificate of backward class issued to Arshad Jamil. In respect of the aforesaid, the enquiry was conducted through Inspector of Revenue and I myself by going at the spot conducted the enquiry and perused the documents produced by him and also perused the government orders. The Statements of the persons of locality namely Sri Furkan Ahmed s/o Abdul Latif r/o 7 Shekhpuri, Jamil Ahmed s/o Jahar Ahmed r/o 7 Shekhpuri, Ekbal Ahmed s/o Abdul Majid r/o 149, Shekhpuri and Ajijudrahahan s/o Habiburrahman r/o 88 Shekhpuri, Rurkee were taken by the Revenue Inspector and myself. From the statement of all the persons also it was confirmed that Arshad Jamil s/o Jamil Ahmed resided at 7 Shekhpur, Rurkee, Haridwar since 1991 and caste momin ansar comes in the list of other backward class in Uttaranchal.

26. On 2nd March, 2005, the aforesaid caste certificate was cancelled but the High Court on 6th May, 2005 set aside the order in Writ Petition No. 448 of 2005. The operative portion of the order dated 6.5.2005 of the High Court is quoted below:-

"In the above circumstances, Annexure 1 Order dated 02.03.2005 is quashed. It will be open to the third respondent to issue notice to the petitioner proposing to cancel the caste certificate already issued to him and giving him reasonable opportunity to state his objections, if any, to the proposal and to pass fresh order in accordance with law after considering the objections, if any, submitted by the petitioner."

Thus the caste certificate issued to the petitioner still holds good and unless and until the said caste certificate is legally cancelled, the petitioner is entitled to be treated as a member of other Backward Class. The enquiry report sent by the District

Magistrate, Haridwar cannot nullify the effect of the above mentioned caste certificate.

27. Uttar Pradesh Public Service (Reservation for Schedule Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 known as U.P. Act No.4 of 1994 provides for reservation in the public services in favour of persons belonging to scheduled castes, scheduled tribes and other backward classes. The caste Momin Ansar is included as Item no. 43 in Schedule I to the said Act. Section 9 of the aforesaid Act deals with Caste Certificate. It reads as under:-

***"9. Caste certificate**.- For the purposes of reservation provided under this Act, caste certificate shall be issued by such authority or officer and in such manner and form, as the State Government may, by order, provide."*

A caste certificate was issued to the petitioner in accordance with the above provision and in view of the judgment of this Court in Writ Petition No. 448 of 2005, the said Caste Certificate will hold good as the cancellation has already been set aside by this Court.

28. On 29th March, 2003 a notification was issued under the U.P. Public Services(Reservation for Scheduled caste, Scheduled Tribes and Other Backward Classes) Act, 1994. Paragraph 1, 2 and 3 of the translated copy of the said notification is quoted below:-

"In the direct recruitment to Public Service, under the Government, the provisions for the reservation for the persons belonging to Schedule Caste, Schedule Tribes and Other Backward Classes have been provided by the U.P. Public Services (Reservation for Schedule Caste, Schedule Tribe and Other Backward Classes) Act, 1994 (as amended and adopted). The description of the Other Backward Castes have been

specified in Schedule 1 of the said Act, but the reservation would not be applicable to the persons even if he is a member of the included caste in Schedule –1 if he 326 is covered by the provisions mentioned in Rule-3 sub Rule (1) read with Schedule-2 of the Act.

2. For getting the reservation as per the said reservation Act, it is necessary to produce the "caste certificate". In Section –9 of the Act it has been provided that such certificate shall be issued by such competent officer or officer and in such form and Performa, which the State Government notifies by an order.

3. By the powers given vide Section-9 of the Act, the State Government has taken a decision that in future certificate for Schedule Caste, Scheduled Tribe and Other Backward Classes shall be issued by District Magistrate/Addl. District Magistrate / Tehsildar of the area in whose jurisdiction the applicant resides or where he has been born, after completing the required formalities certificate shall be issued in the prescribed format by his signature. No reservation be given on certificate issued in unauthorized manner. Govt. has prescribed formats for Schedule Caste, Schedule Tribe and Other Backward Classes, which are enclosed."

The Hindi Translation of Paragraph 3 of the aforesaid notification dated 29th March, 2003 is quoted below :-

3. उक्त धारा 9 द्वारा प्रदत्त शक्ति का प्रयोग करके सरकार द्वारा यह निर्णय लिया गया है कि भविष्य में अनुसूचित जाति / अनुसूचित जन जाति/ अन्य पिछडा वर्ग के लिए जाति प्रमाण–पत्र जिलाधिकारी / अतिरिक्त जिलाधिकारी, सिटी मजिस्ट्रेट/उपजिलाधिकारी/ तहसीलदार जिसके क्षेत्र में सम्बन्धित अभ्यर्थी निवास करता हो अथवा वहां उसका जन्म हुआ हो, द्वारा

सभी वांछित औपचारिकताएं पूर्ण करा कर निर्धारित प्रपत्र में अपने हस्ताक्षर से जारी किया जायेगा। अनाधिकृत रूप से जारी किये गये प्रमाण पत्र पर आरक्षरण की कोई सुविधा न दी जाय। शासन द्वारा अनुसूचित जाति तथा अनुसूचित जन जाति एवं अन्य पिछडे वर्ग के लिए जाति प्रमाण पत्र के प्रारूप निर्धारित किये गये है। जो संलग्न है।"

A perusal of both the English and the Hindi versions shows that under Section 9 of the Act, the caste certificate for other Backward Classes shall be issued by the competent authority in whose jurisdiction the applicant resides or where he was born".

Thus the certificate issued under Section 9 of the Uttar Pradesh Public Services (Reservation of Schedule Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 still holds good in accordance with the aforesaid notification. But this aspect was not taken into consideration by the High Court while recommending to terminate the services of the petitioner. Point no. 3. therefore, is decided in favour of the petitioner.

29. Point No. 4:

Rule 24 of the U.P. Nyayik Constitution Sewa Niyamawali, 1951 provides as follows:-

"24. *Termination of the period of probation.-(1) If it appears to the Governor at any time during or at the end of the period of probation or extended period of probation, as the case may be, that a probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfaction, he may be reverted to his substantive post, if any, or if he does not hold a lien on any substantive post, his services may be dispensed with.*

(2) A probationer whose services are dispensed with during or at the end the period of probation, as the case may

be, under sub rule (1) shall not be entitled to any compensation."

State Counsel rightly pointed out that though the business of the government is being conducted in the name of the Governor it is not always necessary that the order should be actually passed by the Governor himself.

In the Judgment in ***Samsher Singh Vs. State of Punjab and another AIR 1974 SC Page 2192,*** the Supreme Court has observed as follows:

"*82. The appellant Samsher Singh in the context of the Rule s of Business contended that the removal of a Subordinate Judge from Service is a personal power of the Governor and is incapable of being delegated or dealt with under the Rules of Business. We have already held that the Governor can allocate the business of the Government to the Ministers and such allocation is no delegation and it is an exercise of executive power by the Governor through the Council or Officers under the Rules of Business. The contention of the appellant that the order was passed by the Chief Minister without the formal approval of the Governor is therefore, untenable. The order is the order of the Governor."*

In this case in view of the allocation of business, the order of termination was passed by the Chief Minister and it was not necessary to sent the file to the Governor. It may be mentioned in this context that, even though the Governor is the appointing authority of Civil Judges (J.D.), the file was not sent to the Governor when the petitioner was appointed. Hence we do not find any merit in the petitioner's contention that the termination order was not passed by the competent authority.

30. In the light of the discussion above, we hold that the termination of the service of the petitioner is arbitrary and

illegal and hence liable to be quashed. Therefore, the impugned order dated 18.12.04 passed by Respondent No. 1 is quashed. Respondents are directed to reinstate the petitioner in service forthwith. Respondent No. 2 is directed to issue necessary posting orders to the petitioner immediately. The petitioner will be treated to have continued in service without any break, but he will not be entitled to any salary or allowances for the period he has not actually worked.

(Rajesh Tandon, J.) **(Cyriac Joseph C.J.)**

Rathour

December 23, 2005